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COURT OF CRIMINAL APPEALS
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NO. PD- 0243-20

**IN THE
COURT OF CRIMINAL APPEALS
OF TEXAS**

FILED
COURT OF CRIMINAL APPEALS
4/22/2020
DEANA WILLIAMSON, CLERK

**SANDRA JEAN MELGAR
VS.
THE STATE OF TEXAS**

**ON DISCRETIONARY REVIEW FROM THE
COURT OF APPEALS FOR THE
FOURTEENTH SUPREME JUDICIAL DISTRICT OF TEXAS
AT HOUSTON
CASE NUMBER 14-17-00932-CR**

**Appeal from the District Court
of Harris County, Texas
178TH Judicial District
Trial Cause Number 1435566**

SECOND MOTION TO ENLARGE WORD LIMIT FOR PETITION FOR DISCRETIONARY REVIEW

TO THE HONORABLE JUDGES OF SAID COURT:

NOW COMES, SANDRA JEAN MELGAR, appellant in the above-styled and numbered cause, and pursuant to Tex. R. App. P., 9.4(i)(4), files this Second Motion to Enlarge Word Limit for Petition for Discretionary Review, and for cause would show the Court the following:

I.

This case is currently pending in the Court of Appeals, Fourteenth Judicial District, cause number 14-17-00932-CR, after an appeal from a conviction of the offense of murder, in the 178th Judicial District Court of Harris County, Texas, in Cause Number 1435566. On August 24, 2017, the appellant's punishment was assessed by a jury at twenty-seven (27) years confinement in the Institutional Division, Texas Department of Criminal Justice. On January 7, 2020, the Fourteenth Court of Appeals issued an opinion affirming the conviction. On February 20, 2020, the Fourteenth Court of Appeals denied appellant's timely filed Motion for Rehearing En Banc.

II.

This Court previously granted a requested extension to file the Petition for Discretionary Review on or before April 22, 2020.

III.

Concurrent with the requested extension to file the Petition for Discretionary Review, undersigned counsel also requested permission to file an Enlarged Petition for Discretionary Review of 9,000 words, which was denied on March 20, 2020.

IV.

The undersigned counsel requests permission to file an Enlarged Petition for Discretionary Review of 6,990 words for the following reasons:

(A) The record on appeal in this matter is lengthy, over 3,000 pages. The reporter's record consists of approximately 2,112 pages and the clerk's record consists of 920 pages. *In addition,* there were approximately 1,067 exhibits admitted into evidence. (There are seventeen (17) volumes of the reporters record.) The trial in this matter lasted nearly three weeks. This was a very weak, legally insufficient circumstantial evidence case. The undersigned counsel earnestly believe the appellate record establishes that the evidence was legally insufficient to prove the appellant's guilt.

(B) On January 7, 2020, a panel of the Court of Appeals affirmed the conviction and found the evidence legally sufficient in a 19-page opinion. The panel inaccurately characterized the trial record and, in significant part, based its conclusions on an erroneous understanding of the evidence. Moreover, evidence critical to a fair resolution of the legal sufficiency calculus was either overlooked or ignored. Countervailing evidence was simply not considered nor evaluated by the panel in its conclusion that the evidence was legally sufficient, in contravention of both federal and Texas law. *Jackson v. Virginia,* 443 U.S. 307(1979); *Brooks v. State,* 323 S.W.3d

893, 899 (Tex. Crim. App. 2010).

The legal analysis undertaken by the panel failed to distinguish permissible "inferences" legitimately drawn from the evidence from "conclusions based on mere speculation or factually unsupported inferences" which are strictly off limits. *Hooper v. State,* 214 S.W.3d 9, 16 (Tex. Crim. App. 2007). It is respectfully submitted that the panel's legal sufficiency analysis and ultimate conclusions, *inter alia,* wholly ignored the *second* prong of *Jackson v. Virginia, supra,* which "still requires the reviewing court to determine whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *Brooks v. State,* 323 S.W.3d 893, 902 (Tex. Crim. App. 2010).

The appellant and her counsel maintain the jury's verdict is not rational based on the trial record. Accordingly, counsel must address specific factual assertions in the panel's opinion which formed the basis for its finding of legal sufficiency in order to demonstrate that those assertions (and the resulting conclusions) are simply unsupported by the record, the decisional law, or both, even when the evidence is considered in the light most favorable to the verdict. By definition, analysis of the opinion and of the lengthy appellate record herein is exceedingly *fact-intensive*. Moreover, a review of the legal sufficiency of the evidence requires a "highly individualized assessment." *Carrizales v. State,* 414 S.W.3d 737, 742 (Tex. Crim.

App. 2013).

(C) Undersigned counsel has been practicing criminal law since 1978. He had the honor of serving as a Briefing Attorney in 1977 and 1978 for an esteemed judge of this Court, the Honorable Wendell Odom, and is Board Certified both in Criminal Law and Criminal Appellate Law by the Texas Board of Legal Specialization. In those 42 years, he has litigated numerous cases before this Honorable Court–as a prosecutor and as a defense lawyer–and has always met deadlines and conscientiously strived to follow the Texas Rules of Appellate Procedure and the rules of this Court.

However, based upon a reasoned professional judgment, the undersigned counsel earnestly believes that the appellant cannot be accorded effective assistance of counsel on appeal as she is guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, or receive Due Process of law, unless an extension of the word limitations for filing a Petition for Discretionary Review is granted. Appellant presents a legal sufficiency of the evidence ground for review which is inherently *fact* intensive. Having tried the underlying case, the undersigned counsel can attest to the complexity of the factual record and its many nuances. It is imperative that the panel opinion's conclusions and its recitation of record facts be addressed head-on. (The Brief for Appellant in the Court of Appeals was 204 pages in length).

A review of the legal sufficiency of the evidence is often an unremarkable task because in most circumstances application of the law to the facts of the case is rather straight-forward and predictable. However, there are other cases–and this is one of them–which are outliers and require a closer look because the very rationality of the jury's verdict is called into question by the overwhelming evidence of innocence and "weaknesses, omissions, or inconsistencies in the evidence which destroy( ) its cogency." *Parker v. State,* 423 S.W.2d 526, 531 (Tex. Crim. App. 1968).

In light of the four Grounds For Review presented in this Petition for Discretionary Review and in order to accomplish a fair but full assessment and analysis of the panel's erroneous conclusions, the undersigned respectfully requests permission pursuant to T.R.A.P. 9.4(i)(4) to file the Petition for Discretionary Review with a word count in excess of the word limitations imposed by T.R.A.P. 9.4(i)(2)(D), namely, a word count of 6,990 words.

WHEREFORE, PREMISES CONSIDERED, appellant respectfully prays that this motion be granted and that the word limitation be enlarged to 6,990.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Appellant's Second Motion to Enlarge the Word Limit Defendant-Appellant Sandra Jean Melgar has been furnished to Mr. Clinton Morgan, morgan_clinton@dao.hctx.net and Ms. Stacey Soule, information@spa.texas.gov, on this 22nd day of April, 2020.

/S/ George McCall Secrest, Jr.
GEORGE McCALL SECREST, JR.